

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

PRESTIGE GROUP, INC.

Plaintiff :

-against- : U.S. Courthouse
Brooklyn, N.Y.

HENDERSON HILL ADULT HOME
& ASSISTED LIVING PROGRAM,
INC., ET AL. :

Defendants :

- - - - - X August 4, 2010
2:30 p.m.

BEFORE:

HONORABLE ERIC N. VITALIANO
United States District Judge

APPEARANCES:

For the Plaintiff: RICHARD S. BONFIGLIO
Prestige Group 238 92nd Street
Brooklyn, New York 11209

For the Defendant: MENDEL ZILBERBERG & ASSOCIATES, P.C.
Island Manor 6619 Thirteenth Avenue
Brooklyn, New York 11219
BY: MENDEL ZILBERBERG, ESQ.
PAUL J. SALAZAR, ESQ.
SARA MOSKOWITZ

1 For the Defendant: HINMAN STRAUB
Henderson Hill 121 State Street
2 Albany, New York 12207
3 BY: DAVID T. LUNTZ
4

5 Court Reporter: RONALD E. TOLKIN, RMR, CRR
225 Cadman Plaza East
6 Brooklyn, New York 11201
7 718-613-2647
8

9 Proceedings recorded by mechanical stenography, transcript
10 produced by Computer-Assisted Transcript.

11 ***
12

13 THE CLERK: The case on the calendar is Prestige
14 Group, Inc., versus Henderson Hill Adult Home & Assisted
15 Living Program and others. The case number is 09-CV-1357. It
16 is on for oral argument.

17 Will the attorneys please note their appearances,
18 beginning with Plaintiffs' counsel.

19 MR. BONFIGLIO: Richard S. Bonfiglio, 238 92nd
20 Street, Brooklyn, New York, on behalf of the plaintiff, The
21 Prestige Group, Inc..

22 Good afternoon, Your Honor.

23 THE COURT: Good afternoon.

24 MR. ZILBERBERG: Mendel Zilberberg, of 6619
25 Thirteenth Avenue, Brooklyn, New York, on behalf of Island

1 Manor, Baywood, Willy Beer, Charles Scharf and Daniel Stern.

2 THE COURT: Okay.

3 Who else is present?

4 MR. ZILBERBERG: Paul Salazar is here from my
5 office.

6 THE COURT: Okay. Anyone else?

7 MR. LUNTZ: David Luntz from Hinman Straub, 121
8 State Street, Albany, New York, for Henderson Hill, Angelo
9 Servideo, Joseph Cillo, Joseph Sirangelo, Philip Emma, Vincent
10 Sirangelo.

11 THE COURT: Do we have the complete slate? One more
12 voice?

13 MR. ZILBERBERG: Sara Moskowitz is from my office,
14 but she's awaiting admission.

15 THE COURT: We will note her appearance.

16 I have certainly gotten your papers. This motion
17 actually only affects the defendant buyers and the sellers.
18 So counsel for the defendant sellers are here.

19 Defendant buyers and the broker, and not defendant
20 themselves. So we can expect to hear from the broker's
21 lawyers and the defendant buyer's lawyers.

22 Do you wish to add anything to your papers?

23 MR. ZILBERBERG: Yes, Your Honor.

24 The standard for a 12(b)(6) motion was best
25 articulated in the Bell and Atlantic case. It requires that

1 Plaintiffs give a short and plain statement showing the
2 pleader is entitled to relief in order to give the defendant
3 fair notice of what the claim is and the ground upon which it
4 rests.

5 We have not seen that, and that is why we initially
6 brought the 12(b)(6) motion. The plaintiff also has to
7 provide grounds of their entitlement, for which they haven't
8 brought.

9 What is particular about this case is that in the
10 complaint itself, the claim against the buyer defendants were
11 the acts of 2003. And in fact, the relief requested was
12 interest and damages going back to 2003.

13 In 2003 is when the management agreement was
14 executed. And it was Plaintiffs' position, in the complaint,
15 that that was a closing. That although title had not changed,
16 they cited the New York Law which, obviously, in our papers,
17 we disagreed with, that that meant it was a functional
18 closing.

19 The problem with that is, that as it relates to
20 tortious interference, if, in fact, the event occurred in
21 2003, there's a three-year statute of limitations. Which, as
22 we cited in our papers, the Spinapp case, they're very clear,
23 there is a three-year statute of limitations and it's not a
24 continuing tort and it goes from the time at which it was
25 committed. As such, it would be barred by the statute ever

1 limitations.

2 Even without the statute of limitations, the
3 elements of tortuous interference are a valid contract between
4 a plaintiff and a third party; arguably, that happened here.
5 The defendant's knowledge of the contract; arguably, we knew
6 about that. Defendants' intent to induce, agree to
7 destruction of a contractual relationship; clearly, there is
8 no indication of where there was intent on our part. The
9 bargaining defendants were acting solely for their own
10 personal business reasons in trying to move the case.

11 In element number five, are the damages sustained
12 by Plaintiff as a result of Defendant's acts? Well,
13 Plaintiff, then, as now, had their claim against the sellers.
14 They have the opportunity to collect if, in fact, there is the
15 money. We don't take a position on that. Obviously, the
16 Plaintiff and the seller defendants have dramatically
17 different views of this case.

18 In terms of intent, in 2003 the buyer defendants
19 undertook hundreds of thousands of dollars in payments for a
20 property that they did not have title to. There was
21 significant risk on their part when they did that. They did
22 it because they felt it was a good business deal. They didn't
23 enter into this with the intent of a broker not being paid.

24 More importantly, by Plaintiffs' own admission, if
25 there was a functional closing in 2003, we brought the claim

1 six years earlier. So how did we damage the plaintiff in any
2 way by allowing their commission, based upon their position,
3 to accrue six years earlier.

4 There's something a little more troubling; and that
5 is, in the June 28th, 2010, although I believe they were
6 speaking about the events of 2006, which we'll get to in a
7 moment, when we're speaking about certain transfers that
8 happened, "In addition to getting them tactically what they
9 wanted" -- and I'm quoting from the plaintiffs' counsel -- "In
10 addition to getting them tactically what they wanted, which
11 part of which was, you know, to keep the Department of Health
12 from stepping in and shutting this deal down, which probably
13 would have hurt my client in the long run if they did that."

14 There's something that subessential to this whole
15 case. My clients did whatever they could to keep this deal
16 alive; arguably, for their own personal gain. However, if
17 they hadn't keep the deal alive, it would have been to the
18 detriment of the broker as well. Because no deal, for sure no
19 commission. Now there's a closing, maybe there's a
20 commission, maybe there's not.

21 So from the prospective of the buyers, everything
22 that they did in order to facilitate this transaction to keep
23 the deal alive, to keep it going through these many years,
24 was, in fact, by Plaintiffs' own admission, a benefit to them.

25 When we brought our initial papers for the 12(b)(6)

1 motion, suddenly, in the opposition, we started hearing about
2 the events of 2006. And now we move from 2003 to 2006. And I
3 point this out only because of the 12(b)(6) itself, if it's
4 not in the complaint, we should be entitled to a 12(b)(6).

5 The reason I'm going through all this and addressing
6 that which Plaintiffs said in their papers is because I
7 believe that the 12(b)(6) should be issued. I think we should
8 win. I think it should be dismissed with prejudice and I also
9 think we're entitled to sanctions, but I'm going to go through
10 what happened in 2006 as well.

11 In 2006, there were a number of transfers that
12 occurred. When the initial buyers saw that they weren't
13 getting approval from DOH, they brought in another buyer.
14 Now, they did not change the entity that was buying the
15 property at that point, or buying the lease of the facility.
16 What they did is, they sold their interest in the LLC to
17 another individual.

18 We wonder how a breach of contract as Plaintiff
19 claims against the seller's interest, how a breach of contract
20 occurs in 2003 but the tortious interference occurs in 2006.
21 It's just something that leaves me in utter amazement.

22 Even if that were the case, we then go to a
23 question, if the title changed, as they claim, in 2003, why
24 would they be entitled to a new commission in 2006? Do they
25 have a contract that's successive that changes ownership in

1 the property? Are they a broker in perpetuity?

2 The points that were made earlier about both
3 tortuous interference and while, at that point, there would be
4 no statute of limitations, arguably, that was brought in, we
5 also state the same thing. Where is their intent? In fact,
6 that's where the quote came in where plaintiffs' counsel said
7 that, in fact, keeping the old law accrued to their benefit.

8 Now we move to 2009 when there actually was a
9 closing. In the opposition papers, the plaintiff has now come
10 up, we have proof that the buyer's defendants -- the buyer
11 defendants had a duty, somehow, to make sure they were paid.

12 Although, and the purchase agreement specifically
13 sets forth the parties represent to each other -- again, that
14 was between the seller and the broker -- the parties represent
15 to each other -- I'm sorry, Your Honor, the purchase agreement
16 was between the buyers and sellers.

17 The purchase agreement specifically sets forth, "The
18 parties represent to each other that they have dealt with no
19 broker or finder with respect to this agreement except for" --
20 the plaintiff in this case.

21 "The seller and broker have entered into a separate
22 agreement pursuant to which seller shall be obligated to pay
23 the broker the brokers fees in relationship to this
24 transaction."

25 In the opposition papers, Plaintiff claims, there

1 was no lawful excuse for the Baywood defendants, being the
2 buyer defendants, to not pay Prestige what was agreed to in
3 the purchase agreement or to at least escrow same? They've
4 come up with this new duty, there's no legal or lawful excuse?
5 We had no duty.

6 In fact, Your Honor questioned this in our hearing
7 of June 28, 2010. And counsel for the plaintiff said there is
8 no contract with the buyers. And therefore, the Court
9 properly concluded they have no legal obligation to pay their
10 clients. That's page 11 of the transcript from June 10.

11 The fact remains that there is no duty, and
12 plaintiff has tried its various iterations of coming up with
13 some type of argument to bring Plaintiffs into this. First
14 they said it was 2003. When that didn't work, they said it
15 was 2006. When that didn't work, they said it was 2009.

16 They rely on one case to somehow create this duty.
17 Unfortunately, that case stands for everything other than our
18 case. They quote to the Bureau's case, it's a First
19 Department case from 1965. And they quote it -- although I
20 normally don't give their side before I give mine, but they
21 quote it for the following proposition:

22 "Although a proposed purchaser does not undertake to
23 pay the commission, he may be liable for consequential damages
24 by reason of the breach of his contract with the broker, which
25 damages including compensation for the deprivation of the

1 commission the broker would have been paid by the owner of the
2 property."

3 That sounds like a wonderful quote. It sounds like
4 it would create some kind of duty. The problem is that that
5 case is so dramatically different from the case here that I
6 think that even citing to that case, essentially -- the case
7 there was where the buyers went out and hired the broker. The
8 buyers got into a contract with the broker.

9 Then, as the year progressed, the responsibility to
10 pay was shifted from the buyer to the seller. The buyer
11 backed out of the deal for no apparent real excuse. So the
12 Court reasoned, they said, look, you buyers went out and hired
13 a broker, you signed a contract with the broker. The fact
14 that you shifted the fee agreement and then you went through
15 default, you buyers went and defaulted on the deal, well, you
16 know something, there may be some responsibility there.

17 In this case, it's seller who hired the broker. It
18 was always understood, there's been nothing contrary in this
19 case that it's the seller that's responsible to pay the
20 brokerage. And in fact, the deal concluded.

21 So that one case was an exact opposite fact pattern
22 to our case. There is no duty on the part of the buyers to
23 pay brokers, despite everything they said in their papers.
24 There just isn't.

25 Then we get to unjust enrichment, which arguably,

1 there's case law going back forth that it's a three-year
2 statute, a six-year statute. But even if we operate that
3 under New York Law the defendant must have received the
4 benefit at the plaintiffs' expense. Now, we don't see where
5 we got the benefit. We paid for that which we got. It wasn't
6 at the expense of the plaintiff.

7 Maybe the seller had to pay them, maybe the seller
8 didn't have to pay them. That's for them to work out, for the
9 Court to decide. However, it wasn't at our expense. I'm
10 sorry, it wasn't -- our benefit was not at the plaintiffs'
11 expense, we paid.

12 The law is that the plaintiff must show that the
13 defendant either unjustly retained the benefit to the loss of
14 the plaintiff or retained money or property of plaintiff
15 against the fundamental principles of justice or equity.

16 There is no reason for us to have done that which in
17 the opposition papers the plaintiff would like to present to
18 this Court. There's no authority for it. It's not the way
19 deals are done. Sellers pay brokers. And as the Court
20 pointed out when we were here last time, had we not paid the
21 sellers, then there would have been no obligation to pay the
22 brokers.

23 We believe that the plaintiff has twisted and turned
24 every way they can, when what was in the complaint didn't
25 work, they came up with two different time frames. Neither of

1 which had a basis in fact or basis in law. And frankly, as I
2 said before, I don't know why we're here.

3 And that is the reason why we request sanctions. We
4 should not have been called in in the first place. There is
5 no basis for it, and this is exactly why sanctions are
6 assessed.

7 It stems from the rules of the New York chief
8 administrative judge. "And the Court," as they say, "Will
9 look whether the conduct was completely without merit in law
10 and cannot be supported by a reasonable argument for an
11 extension, modification or reversal of existing law, the
12 conduct was undertaken primarily to prolong the resolution of
13 a litigation or harass or maliciously injure another or
14 assertions of material factual statements that are false."

15 Under the federal rules, Rule 11, "Certifications
16 are by the attorney, to the best of their information and
17 belief; the pleadings are well-grounded in fact and warranted
18 by existing law."

19 There's been a substantial amount of law that has
20 been presented to the Court that is simply not on point. We
21 do not have any articulation of any reason why my clients are
22 here. Accordingly, we ask that the 12(b)(6) motion be granted
23 with prejudice and that we be awarded sanctions.

24 Thank you.

25 THE COURT: Thank you, Mr. Zilberberg.

1 Do you wish to be heard on opposition?

2 MR. BONFIGLIO: I do, Your Honor.

3 I will begin by noting that our 38-page complaint
4 did not err on the side of brevity. And although
5 Mr. Zilberberg would have this Court believe that we only
6 mentioned in our complaint the events of 2003, in actuality,
7 the complaint included not only paragraphs describing what
8 took place in 2003 and 2006, but all of the documents that
9 were referred to.

10 It was pled in a style of continuum to show what
11 happened from the day Plaintiff was first retained by the
12 seller defendants to market and ultimately sell this business
13 in Staten Island through the time when the complaint was
14 filed. By which time, the buyer defendants had, for about six
15 years, effective possession of and control over all the assets
16 that they had contracted to buy and were, in fact, paying for
17 them, but still hadn't had a formal closing.

18 But those are just the skeletal facts of the case.
19 The claims that were brought against the respective sets of
20 defendants were articulated. We don't have to go into
21 Henderson Hill anymore, but they are breach of contract and
22 standard commercial claims.

23 What we did not sue the buyer defendants for was
24 breach of contract or breach of duty, which seems to be the
25 red herring here. We never alleged that they had a duty to

1 see that our broker fees got paid. We sued them for tortuous
2 interference with contract.

3 And that contract is a contract between Prestige and
4 the seller defendants. It's a contract to be compensated, and
5 that's part of the complaint. Both briefs cite the applicable
6 court of appeals cases in New York that describe what the
7 elements of that cause of action are. And neither, neither,
8 set of cases that were relied on makes any mention of the
9 existence of a duty.

10 What is mentioned in these cases, and what is most
11 important, is that one of the elements, after establishing
12 that there is a contract, which, clearly, was established in
13 the complaint, and it's been acknowledged by counsel here in
14 his argument, and the defendants' knowledge of that contract,
15 which is also admitted. And even if it wasn't admitted, that
16 contract was expressly referred to in the purchase agreement
17 that was entered into by the buyer and a seller defendants in
18 February of 2003.

19 But the next element, which New York adapted from
20 the restatement, provides that "One who intentionally and
21 improperly interferes with the performance of a contract,
22 except the contract in merit, between another and a third
23 person by inducing or otherwise causing the third person not
24 to perform the contract," and that is what is at the essence
25 of our complaint against the buyer defendants are.

1 After February of '03, when the parties entered into
2 this purchase agreement and identified what was to be sold and
3 how much was to be paid for, the deal did not stop there and
4 it did not close in a conventional fashion.

5 In June of '03, the parties arranged, between
6 themselves, to basically give the buyer defendants the benefit
7 of what they were bargaining for, which is possession and
8 control of the assets that they wanted in exchange for the
9 commencement of payments to the seller defendants, which is
10 what they wanted.

11 There was one missing ingredient; and that is, the
12 approval of the New York State Department of Health. We argue
13 that vis-a-vis the seller defendants, that was sufficient to
14 earn Prestige its commission. Because under applicable
15 decisional law and tax law in New York State, everything that
16 was required for a "sale" to take place had taken place:
17 There was a transfer of possession in exchange for
18 consideration.

19 But we did not stop there, and were alleged that is
20 the point in time when the buyer defendants enabled the seller
21 defendant to breach the contract. They certainly did help,
22 but what actually happened is that at that juncture in time,
23 and as is included in the complaint and supported with an
24 exhibit, money was escrowed as a token that the fee due and
25 owing the plaintiff was going to be paid when the formal

1 closing took place.

2 What makes the buyer defendants culpable is that, in
3 June of 2006 a series of transactions were entered into which
4 did several things. The first thing is that it brought a new
5 player into the game in the person of Mr. Stern. And this was
6 effectuated through a transfer of the ownership interest of
7 Mr. Beir and Scharf in the Baywood entity to Mr. Stern.

8 There is nothing unremarkable about that, but it
9 does have significance in terms of the original deal that was
10 made. Because in the original purchase agreement, it says in
11 Paragraph 11 that if there is a change in the majority
12 ownership of the entity that was buying these assets, which,
13 at that time, was Island Manor and then Baywood came to be
14 substituted, but if there is a change of ownership, of a
15 majority of the ownership, then the full contract price is due
16 and owing at that time.

17 That gave the seller defendants the unfettered right
18 to then claim the sales proceeds. And certainly, it would
19 have enabled Prestige to collect its fee. However, that
20 provision went on to say that the seller defendants could
21 agree to any other terms that they wished to. But that's
22 something that they didn't have to do. It's something they
23 could do if they so chose. It shouldn't operate the prejudice
24 plaintiffs claim to its commission because this is something
25 that's done as an accommodation for the buyers.

1 But that's kind of the point, all of these
2 agreements operate to the benefit of the buyers. The 2003
3 agreements and the 2006 agreements all ultimately enable the
4 buyer defendants to either secure or continue to have
5 possession of these assets by paying the seller defendants.
6 But it's now operating to prejudice Prestige who brought this
7 deal about and is watching the deal be consummated, but
8 doesn't get what it bargained for even though the buyer
9 defendants know they're supposed to be paid.

10 Two other things happened in 2006. The deal itself
11 was changed because in the amended purchase agreement there is
12 now a provision for monthly payments that were kicked up from
13 \$71,000 a month to \$100,000 a month, and there's a side
14 agreement entered into by Mr. Stern and Mr. Sirangelo
15 providing for an additional \$30,000 a month.

16 Those two agreement, both of which expressly
17 referred to the purchase agreement, which, in turn, refers to
18 the exclusive listening agreement, effectively amended the
19 purchase agreement and increased the purchase price. In so
20 doing, it revised that agreement and those changes were made
21 in January of 2006; and that's within the three-year ambit of
22 the statute of limitations on tortuous interference.

23 When they amended that agreement, and whose benefit
24 is it for? The seller gets more money in order to give the
25 buyer more time to get whatever approvals it needed to to

1 formally close the deal. But these agreements operate through
2 the benefits of these buyer defendants and to the detriment of
3 Prestige who's still sitting there waiting to be paid for a
4 deal they put together in '03.

5 All of these agreements are plead very precisely.
6 And their purpose and effect in bringing about what happened
7 here are all laid out in detail in the complaint. It's not a
8 one paragraph conclusory blurb. These documents are
9 identified, and they're cumulative effect is mentioned in the
10 complaint to show how each of these elements of the cause of
11 action of tortuous interference line up.

12 Interestingly, and discovered only after the
13 complaint was filed, is that despite having been sued for
14 tortuous interference or unjust enrichment, the buyer
15 defendants actually attended a formal closing of title on the
16 sale of these assets in June of 2009, three months after this
17 action was commenced, and alleged that they paid all of the
18 sales consideration to the seller defendants without
19 escrowing.

20 I know the issue there is no duty to do that, but
21 you are now being sued for interfering with this contract.
22 One might expect that if you were being sued for that, you
23 would at least segregate that part of the assets which
24 constitute the fee. But see, this is typical of the way the
25 buyer defendants have comported themselves from the get go.

1 Yes, they have a pecuniary interest in getting what they want.
2 That, to the best of my knowledge, is not an actionable
3 offense in the United States.

4 What is actionable is when they arrange their
5 business matters in a way that it interferes with the
6 contractual rights of someone else. In this case, that's what
7 we have shown.

8 Prestige brought these parties together. Prestige
9 got the deal done and got it in a commercially enforceable and
10 viable manner. Then the defendants, both sets of them, went
11 about altering the deal in a manner that still gave both sides
12 what they wanted but froze out the plaintiff.

13 That's what is not right, that is what is tortuous
14 and that is why these defendants were brought in, and should
15 stay it. It is not necessary that the acts of the buyer
16 defendants be the sole reason why the seller defendants
17 breached their contract. They only have to be part of the
18 reason. They are part of the reason. They are enablers.

19 They, by choosing to orchestrate their affairs in
20 the manner in which they did, and paying the funds in the
21 manner in which they did enabled the seller to continue to not
22 pay Prestige. That is where the tort is. That is what we
23 have complained of.

24 As far as the unjust enrichment claim is concerned,
25 I ask the Court now to switch its head from sitting in law to

1 sitting in equity. Hamlet said there's something rotten in
2 Denmark. I say it's in Brooklyn, Your Honor. These guys knew
3 what they were doing and they orchestrated their affairs in a
4 manner where they knew they were freezing the plaintiff out.
5 That is not only unjust, it's inequitable.

6 This is not a situation where Prestige did a little
7 bit of work and the cast of characters changed over time and
8 there is really no basis for compensation. All the work on
9 this deal was all done up front. All that's happened over
10 time is some fresh funds were brought into the deal, but they
11 didn't abandon the old deal.

12 Every document that's ever been executed by the
13 parties since the execution of the purchase agreement
14 expressly refers to it, and amends it or modifies it in some
15 way and then preserves the rest of it right down to the fact
16 that when Stern came in, he didn't cancel that contract and
17 enter into a new deal with the sellers.

18 He bought the deal that was already in place and had
19 been preserved, by that time, for three years. So when the
20 sellers or the buyers say that Stern bought the business, that
21 is not legally true, accurate or correct.

22 Baywood bought it. Baywood was the assignee of
23 Island Manor, and whoever owned Baywood is irrelevant.
24 Baywood is the contracting party in contractual agreement by
25 substitution via the assignment. Baywood is the entity into

1 which the bill of sale was produced after the action was
2 commenced.

3 Baywood got, ultimately, what it contracted for, and
4 paid, allegedly, all the -- we don't know what the total
5 consideration is. Because although they admitted that
6 Mr. Stern paid the full amount required by the contract as
7 modified, the contract was modified to provide, at one point,
8 a formal closing, payment of a certain amount of cash, release
9 of the escrow and payment of notes.

10 Then, that came to be modified to release the
11 escrow, make an additional cash payment and commence paying
12 the notes. Then, it was modified again to increase the amount
13 of notes, extend the terms of those notes. So that, by our
14 calculation, neither which set of defendants have refuted in
15 any of their papers, moving or opposition, the sales
16 consideration went from roughly \$9,000,000 to in excess of
17 \$13,000,000.

18 And that happened in June of '06, Your Honor, which
19 is why we say that amendment was not just a facial amendment.
20 It was substantive in terms of driving the price up
21 substantially. But all of this additional consideration was
22 agreed to. Increasing the amount of Prestige's claim and the
23 expressed terms of the exclusive listing agreement today,
24 Prestige was to be paid from/of the proceeds of sale.

25 So in our view, included in the purchase price is an

1 amount of money that is due Prestige. And done rightly, as
2 those funds are released, part of them belong to Prestige.
3 It's not about the duty that my adversary wishes to, first,
4 allege doesn't exist and then allege that because it doesn't
5 exist we're not entitled, we're simply talking about good
6 faith dealing with contract terms that are known to exist by
7 the parties to those agreements.

8 The defendants acknowledge, the buyer defendants
9 acknowledge they knew Prestige was to be paid. But they did
10 nothing to enable that to happen, other than put money into
11 the sellers' hands. And they knew from the correspondence
12 that was going on between and among the parties, the sellers
13 were not turning around and compensating Prestige.

14 But in the end, at the end of the day, the buyer
15 defendants now own, legally and beneficiary, all of the assets
16 that they contracted to buy. And finished that deal at a time
17 when they were parties to this lawsuit and paid the
18 consideration that was called for by those agreements, which
19 are all mentioned in the complaints, and made no attempt or
20 provision to give to Prestige or escrow for Prestige that
21 which it claimed.

22 And in so doing, have now acquired this property
23 knowing that it was to Prestige's detriment to pay all of that
24 compensation when and in the manner that it did. That is the
25 basis for our unjust enrichment plea. It is not a matter of a

1 normal 30 or 90-day gap between contract and closing where the
2 parties just went in and applied for financing and showed up.

3 This is a deal that went on for years. It was very
4 heavily marketed, as shown in the moving affidavits for our
5 injunctive relief. Because we were in the dark and didn't
6 know that the closing took place until we were told after the
7 fact. That's kind of what the problem is here.

8 We are not complaining that the buyer defendants
9 owed us a duty to see us get paid. We simply said they have
10 an obligation not to interfere with our ability to get paid.
11 And when they organized their affairs in a manner in which it
12 is virtual certitude that by admitting to the sellers under
13 the circumstances that existed, that the plaintiff is not
14 going to get paid, they are enabling them to avoid their
15 contractual obligations to Prestige.

16 That is the basis for our claim. And I don't know
17 if there's anything else to add to that, Your Honor. It's all
18 in there in chronological order.

19 MR. ZILBERBERG: Your Honor --

20 THE COURT: I don't think I need anymore,
21 Mr. Zilberberg. I have enough.

22 This has been a case that, I guess, is best
23 described as not seeing the forest for the trees. There are
24 so many twists and convolutions in this case. Putting aside
25 any issue -- and without deciding it -- putting aside any

1 issues with respect to statute of limitations, the motion can
2 be disposed of now as follows:

3 Mr. Bonfiglio has mentioned a couple of times, the
4 complaint is long and there are many agreements affixed to it
5 and incorporated by it, and therefore, before the Court on a
6 Rule 12(b)(6) motion just as much as the factual paragraphs of
7 the complaint itself, and are deemed to be as they are
8 represented to be.

9 One of those agreements is the listing agreement
10 which is really the essential agreement that controls the
11 result here. There's absolutely nothing, absolutely nothing,
12 in the listing agreement that in anyway ties the hands of the
13 seller and its potential buyers as to what the terms of any
14 agreement between buyer and a seller would look like.

15 It provides for two possibilities in the listing
16 agreement. And when I say possibilities, I mean with respect
17 to the possibility of the broker getting a fee. One is that
18 there is somehow a transfer of ownership interest. Doesn't
19 have to be a closing, doesn't say anything. It just says a
20 transfer of ownership interest that is effective within the
21 terms of this -- of the -- pursuant to the initial services of
22 the broker that generates one kind of thinking.

23 Then there is another provision, a contingency
24 provision that basically deals with what happens if, at the
25 very last minute, all things being done, that the deal doesn't

1 close, the buyer pulls out, and then there's a different fee
2 arrangement that is provided for in the listing agreement.

3 But what's important here under the tortuous
4 interference claim, is that there is absolutely no allegation
5 that the buyer did anything other than to try to make a deal
6 with the seller, which is what essentially earns the broker,
7 potentially, a fee.

8 So there is no interference here. This is the
9 fulfillment of what the listing agreement looked to. There is
10 absolutely no evidence whatsoever of an allegation that
11 there's any -- that there's been any act by the buyers that
12 interferes with whatever right the broker may have under the
13 listing agreement to obtain a fee from the seller in the event
14 that whatever this deal is qualifies under the terms of the
15 listing agreement.

16 So that, again, regardless of what the acts are,
17 whether they fall within the statute or fall without the
18 statute of limitations, none of these alleged acts of the
19 defendant tortuously interfere with the -- with whatever
20 obligation the buyer or the sellers may have to pay a fee to
21 the broker.

22 It is absolutely clear, as well, and I didn't hear
23 anything in Mr. Bonfiglio's argument that even suggests to the
24 contrary that the listing agreement makes absolutely clear
25 that the broker is working only as the seller's agent, only.

1 So that, it doesn't even purport to provide a
2 service to the buyer. He is purporting to only provide a
3 service to the seller. So that with respect to the alleged
4 unlawful, unjust enrichment claim here, there is not unjust
5 enrichment vis-a-vis any service that the broker may have
6 provided to this deal.

7 The buyer never agreed or requested or received any
8 benefit from the broker. So they weren't enriched because
9 somehow they had some sort of relationship with the broker
10 that got them the benefit that they didn't -- that hey had
11 contemplated paying for or perhaps may have had a contract to
12 pay for, and somehow the contract failed or, for whatever
13 reason, that there was any reasonable expectation by either
14 the broker or the buyer that the broker was ever providing a
15 service to the buyer.

16 So that, therefore, when the buyer receives the
17 service, and I'm sure there's the argument that the buyer
18 bought the business, but that's buying the product. The
19 question was, was there also something else that was the
20 service of the broker. But the buyer never was in a
21 relationship with the broker to receive a service from the
22 broker. Not only were they not in that relationship, the
23 seller and the broker had agreed that the broker was working
24 for the seller and not the buyer.

25 So that, no one had any reasonable anticipation that

1 the buyer had any obligation whatever to the broker. So that
2 there is no plausible claim for unjust enrichment. As there
3 is no plausible claim for tortuous interference. Because all
4 of the acts that the broker -- that the buyer took were acts
5 that were taken to execute on a deal. And there was no
6 limitation in the listing agreement, either on the seller or
7 the broker, as to what those acts should be or what form the
8 contract that transfers ownership was to take.

9 They were both, the buyer and the seller, in an
10 unrestricted position to make that deal. The question that's
11 ultimately left is that when the deal was done, was it a
12 transfer -- and this is a very language in the listing
13 agreement -- was it a transfer of ownership? And did occur as
14 a result of negotiation that began at the time that the
15 contract was in play, and therefore, a fee of some sort is
16 owed.

17 That's why the seller defendants' motion to dismiss
18 was denied, because there are fact questions that ultimately
19 relate to that relationship. There are no fact questions.
20 There are no allegations that plausibly state a claim for
21 tortuous interference or unjust enrichment as to the buyers.

22 So as to all of the buyer defendants, the motion to
23 dismiss with prejudice is granted.

24 On the motion for sanctions, to the extent that it
25 is properly before the Court, and it appears not to be, but to

1 the extent that it is properly before the Court, the Court
2 does not see a basis upon which sanctions should be granted
3 given the parameters of the facts here, and the argument as to
4 whether or not in this kind of transaction there ought to be
5 some sort of duty impressed upon the buyer.

6 To the extent that that argument is made, it's clear
7 to the Court that neither statutory or common law in New York
8 which controls this relationship, is there any basis for
9 extending the law to in anyway that would somehow impose upon
10 the buyer some sort of policeman's obligation to ensure that
11 the seller, the opposite party, the adversary party in this
12 contractual relationship, should comply with a contract that
13 the buyer has notice of but is not a party to.

14 So on that basis, the sanctions -- any motion for
15 sanctions properly before the Court is denied. That is the
16 rule of the Court. To the extent anyone needs a copy of the
17 reasons for it, the reporter will certainly provide an
18 opportunity for you to purchase it.

19 Is there anything further on this matter, this
20 matter being the motion to dismiss?

21 MR. BONFIGLIO: No, Your Honor.

22 THE COURT: None, all right.

23 I understand that the remaining defendants and the
24 plaintiff have an appearance before Magistrate Judge
25 Pohorelsky, which, I think, is to follow. I don't want to

1 detain counsel or my brother judge from seeing you as soon as
2 you can get there.

3 MR. BONFIGLIO: I have one procedural thing, Your
4 Honor. You denied the 12(b)(6) motion for the seller
5 defendants back on June 28th, and I believe the ECF notice
6 went out on the 29th. In my simple view of the world, that
7 gave them 30 days to answer the complaint but I don't have an
8 answer.

9 THE COURT: To the extent that they need more time,
10 they have it. We don't do trial by ambush here. You're
11 before the magistrate judge. If you need to arrange for the
12 scheduling of that, please do so.

13 MR. BONIFIGLIO: Understood.

14 Thank you, Your Honor.

15 MR. ZILBERBERG: Thank you, Your Honor.

16

17

18

19

20

21

22

23

24

25

\$	4	agree [2] - 5:6, 16:21 agreed [4] - 9:2, 21:22, 26:7, 26:23 agreement [34] - 4:13, 8:12, 8:15, 8:17, 8:19, 8:22, 9:3, 10:14, 14:16, 15:2, 16:10, 17:11, 17:14, 17:16, 17:17, 17:18, 17:19, 17:20, 17:23, 20:13, 20:24, 21:23, 24:9, 24:10, 24:12, 24:14, 24:16, 25:2, 25:9, 25:13, 25:15, 25:24, 27:6, 27:13 agreements [9] - 17:2, 17:3, 18:1, 18:5, 22:7, 22:18, 24:4, 24:9 AL [1] - 1:7 Albany [2] - 2:2, 3:8 alive [3] - 6:16, 6:17, 6:23 allegation [2] - 25:4, 25:10 allegations [1] - 27:20 allege [2] - 22:4 alleged [5] - 13:25, 15:19, 18:17, 25:18, 26:3 allegedly [1] - 21:4 allowing [1] - 6:2 altering [1] - 19:11 amazement [1] - 7:21 ambit [1] - 17:21 ambush [1] - 29:10 amended [3] - 17:11, 17:18, 17:23 amendment [2] - 21:19 amends [1] - 20:14 amount [6] - 12:19, 21:6, 21:8, 21:12, 21:22, 22:1 Angelo [1] - 3:8 answer [2] - 29:7, 29:8 anticipation [1] - 26:25 anyway [2] - 24:12, 28:9 apparent [1] - 10:11 appeals [1] - 14:6 appearance [2] - 3:15, 28:24 APPEARANCES [1] - 1:14 appearances [1] - 2:17 applicable [2] - 14:5, 15:14 applied [1] - 23:2 approval [2] - 7:13, 15:12 approvals [1] - 17:25 arguably [5] - 5:4, 5:5, 6:16, 8:4, 10:25 argue [1] - 15:12 argument [8] - 2:16, 9:13, 12:10, 14:14, 25:23, 26:17, 28:3, 28:6 arrange [2] - 19:4, 29:11 arranged [1] - 15:5 arrangement [1] - 25:2 articulated [2] - 3:25, 13:20 articulation [1] - 12:21 aside [2] - 23:24, 23:25 assertions [1] - 12:14 assessed [1] - 12:6 assets [7] - 13:15, 15:8, 16:12, 17:5, 18:16, 18:23, 22:15 assignee [1] - 20:22 assignment [1] - 20:25
\$100,000 [1] - 17:13 \$13,000,000 [1] - 21:17 \$30,000 [1] - 17:15 \$71,000 [1] - 17:13 \$9,000,000 [1] - 21:16	4 [1] - 1:9	
	6	
	6619 [2] - 1:19, 2:24	
'	7	
'03 [3] - 15:1, 15:5, 18:4 '06 [1] - 21:18	718-613-2647 [1] - 2:6	
0	9	
09-CV-1357 [2] - 1:4, 2:15	90-day [1] - 23:1 92nd [2] - 1:15, 2:19	
1	A	
10 [1] - 9:10 11 [3] - 9:10, 12:15, 16:11 11201 [1] - 2:6 11209 [1] - 1:16 11219 [1] - 1:20 12(b)(6) [8] - 3:24, 4:6, 6:25, 7:3, 7:7, 12:22, 24:6, 29:4 12(b)(6) [1] - 7:4 121 [2] - 2:1, 3:7 12207 [1] - 2:2 1965 [1] - 9:19	abandon [1] - 20:11 ability [1] - 23:10 absolutely [6] - 24:11, 25:4, 25:10, 25:22, 25:24 accommodation [1] - 16:25 accordingly [1] - 12:22 accrue [1] - 6:3 accrued [1] - 8:7 accurate [1] - 20:21 acknowledge [2] - 22:8, 22:9 acknowledged [1] - 14:13 acquired [1] - 22:22 act [1] - 25:11 acting [1] - 5:9 action [4] - 14:7, 18:11, 18:17, 21:1 actionable [2] - 19:2, 19:4 acts [8] - 4:11, 5:12, 19:15, 25:16, 25:18, 27:4, 27:7 actuality [1] - 13:6 adapted [1] - 14:19 add [2] - 3:22, 23:17 addition [2] - 6:8, 6:10 additional [3] - 17:15, 21:11, 21:21 addressing [1] - 7:5 administrative [1] - 12:8 admission [3] - 3:14, 5:24, 6:24 admitted [3] - 14:15, 21:5 admitting [1] - 23:12 Adult [1] - 2:14 ADULT [1] - 1:6 adversary [2] - 22:3, 28:11 affairs [3] - 19:19, 20:3, 23:11 affects [1] - 3:17 affidavits [1] - 23:4 affixed [1] - 24:4 afternoon [2] - 2:22, 2:23 agent [1] - 25:25	
2		
2003 [14] - 4:11, 4:12, 4:13, 4:21, 5:18, 5:25, 7:2, 7:20, 7:23, 9:14, 13:6, 13:8, 14:18, 17:2 2006 [13] - 6:6, 7:2, 7:10, 7:11, 7:20, 7:24, 9:15, 13:8, 16:3, 17:3, 17:10, 17:21 2009 [3] - 8:8, 9:15, 18:16 2010 [3] - 1:9, 6:5, 9:7 225 [1] - 2:5 238 [2] - 1:15, 2:19 28 [1] - 9:7 28th [2] - 6:5, 29:5 29th [1] - 29:6 2:30 [1] - 1:9		
3		
30 [2] - 23:1, 29:7 38-page [1] - 13:3		

<p>Assisted [2] - 2:9, 2:14 ASSISTED [1] - 1:7 ASSOCIATES [1] - 1:19 Atlantic [1] - 3:25 attempt [1] - 22:19 attended [1] - 18:15 attorney [1] - 12:16 attorneys [1] - 2:17 August [1] - 1:9 authority [1] - 11:18 Avenue [2] - 1:19, 2:25 avoid [1] - 23:14 awaiting [1] - 3:14 awarded [1] - 12:23</p>	<p>bring [1] - 9:13 bringing [1] - 18:6 broker [35] - 3:19, 5:23, 6:18, 8:1, 8:14, 8:19, 8:21, 8:23, 9:24, 10:1, 10:7, 10:8, 10:13, 10:17, 14:1, 24:17, 24:22, 25:6, 25:12, 25:21, 25:25, 26:5, 26:8, 26:9, 26:14, 26:20, 26:21, 26:22, 26:23, 27:1, 27:4, 27:7 broker's [1] - 3:20 brokerage [1] - 10:20 brokers [4] - 8:23, 10:23, 11:19, 11:22 Brooklyn [7] - 1:6, 1:16, 1:20, 2:6, 2:20, 2:25, 20:2 brother [1] - 29:1 brought [12] - 4:6, 4:8, 5:25, 6:25, 7:13, 8:4, 13:19, 16:4, 17:6, 19:8, 19:14, 20:10 Bureau's [1] - 9:18 business [6] - 5:10, 5:22, 13:12, 19:5, 20:20, 26:18 buy [3] - 5:12, 13:16, 22:16 buyer [43] - 4:10, 5:18, 7:13, 8:10, 9:2, 10:10, 13:14, 13:23, 14:17, 14:25, 15:6, 15:20, 16:2, 17:4, 17:8, 17:25, 18:2, 18:14, 18:25, 19:15, 22:8, 22:14, 23:8, 24:14, 25:1, 25:5, 25:20, 26:2, 26:7, 26:14, 26:15, 26:16, 26:17, 26:20, 26:24, 27:1, 27:4, 27:9, 27:22, 28:5, 28:10, 28:13 buyer's [2] - 3:21, 8:10 buyers [17] - 3:17, 3:19, 6:21, 7:12, 8:16, 9:8, 10:7, 10:8, 10:12, 10:15, 10:22, 16:25, 17:2, 20:20, 24:13, 25:11, 27:21 buying [4] - 7:14, 7:15, 16:12, 26:18 BY [2] - 1:20, 2:2</p>	<p>changed [4] - 4:15, 7:23, 17:11, 20:7 changes [2] - 7:25, 17:20 characters [1] - 20:7 Charles [1] - 3:1 chief [1] - 12:7 choosing [1] - 19:19 chose [1] - 16:23 chronological [1] - 23:18 Cillo [1] - 3:9 circumstances [1] - 23:13 cite [1] - 14:5 cited [2] - 4:16, 4:22 citing [1] - 10:6 claim [15] - 4:3, 4:10, 5:13, 5:25, 7:23, 16:18, 16:24, 19:24, 21:22, 23:16, 25:4, 26:4, 27:2, 27:3, 27:20 claimed [1] - 22:21 claims [4] - 7:19, 8:25, 13:19, 13:22 clear [4] - 4:22, 25:22, 25:24, 28:6 clearly [2] - 5:7, 14:12 CLERK [1] - 2:13 client [1] - 6:13 clients [3] - 6:15, 9:10, 12:21 close [3] - 15:4, 18:1, 25:1 closing [12] - 4:15, 4:18, 5:25, 6:19, 8:9, 13:17, 16:1, 18:15, 21:8, 23:1, 23:6, 24:19 collect [2] - 5:14, 16:19 coming [1] - 9:12 commence [1] - 21:11 commenced [2] - 18:17, 21:2 commencement [1] - 15:9 commercial [1] - 13:22 commercially [1] - 19:9 commission [8] - 6:2, 6:19, 6:20, 7:24, 9:23, 10:1, 15:14, 16:24 committed [1] - 4:25 common [1] - 28:7 compensated [1] - 14:4 compensating [1] - 22:13 compensation [3] - 9:25, 20:8, 22:24 complained [1] - 19:23 complaining [1] - 23:8 complaint [18] - 4:10, 4:14, 7:4, 11:24, 13:3, 13:6, 13:7, 13:13, 14:5, 14:13, 14:25, 15:23, 18:7, 18:10, 18:13, 24:4, 24:7, 29:7 complaints [1] - 22:19 complete [1] - 3:11 completely [1] - 12:9 comply [1] - 28:12 comported [1] - 18:25 Computer [1] - 2:9 Computer-Assisted [1] - 2:9 concerned [1] - 19:24 concluded [2] - 9:9, 10:20 conclusory [1] - 18:8 conduct [2] - 12:9, 12:12 consequential [1] - 9:23</p>
B		
<p>backed [1] - 10:11 bargained [1] - 17:8 bargaining [2] - 5:9, 15:7 barred [1] - 4:25 based [1] - 6:2 basis [9] - 12:1, 12:5, 20:8, 22:25, 23:16, 28:2, 28:8, 28:14 baywood [2] - 20:24, 20:25 Baywood [8] - 3:1, 9:1, 16:7, 16:13, 20:22, 20:23, 21:3 Beer [1] - 3:1 BEFORE [1] - 1:10 began [1] - 27:14 begin [1] - 13:3 beginning [1] - 2:18 behalf [2] - 2:20, 2:25 Beir [1] - 16:7 belief [1] - 12:17 Bell [1] - 3:25 belong [1] - 22:2 beneficiary [1] - 22:15 benefit [11] - 6:24, 8:7, 11:4, 11:5, 11:10, 11:13, 15:6, 17:2, 17:23, 26:8, 26:10 benefits [1] - 18:2 best [4] - 3:24, 12:16, 19:2, 23:22 between [9] - 5:3, 8:14, 8:16, 14:3, 14:22, 15:5, 22:12, 23:1, 24:14 bill [1] - 21:1 bit [1] - 20:7 blurb [1] - 18:8 Bonfiglio [2] - 2:19, 24:3 BONFIGLIO [5] - 1:15, 2:19, 13:2, 28:21, 29:3 Bonfiglio's [1] - 25:23 BONIFGLIO [1] - 29:13 bought [4] - 20:18, 20:20, 20:22, 26:18 breach [7] - 7:18, 7:19, 9:24, 13:21, 13:24, 15:21 breached [1] - 19:17 brevity [1] - 13:4 briefs [1] - 14:5</p>	<p>Cadman [1] - 2:5 calculation [1] - 21:14 calendar [1] - 2:13 cancel [1] - 20:16 cannot [1] - 12:10 case [28] - 2:13, 2:15, 3:25, 4:9, 4:22, 5:10, 5:17, 6:15, 7:22, 8:20, 9:16, 9:17, 9:18, 9:19, 10:5, 10:6, 10:17, 10:19, 10:21, 10:22, 11:1, 13:18, 19:6, 23:22, 23:24 cases [3] - 14:6, 14:8, 14:10 cash [2] - 21:8, 21:11 cast [1] - 20:7 causing [1] - 14:23 certain [2] - 6:7, 21:8 certainly [4] - 3:16, 15:21, 16:18, 28:17 Certifications [1] - 12:15 certitude [1] - 23:12 change [3] - 7:14, 16:11, 16:14</p>	
C		

<p>consideration [6] - 15:18, 18:18, 21:5, 21:16, 21:21, 22:18</p> <p>constitute [1] - 18:24</p> <p>consummated [1] - 17:7</p> <p>contemplated [1] - 26:11</p> <p>contingency [1] - 24:23</p> <p>continue [2] - 17:4, 19:21</p> <p>continuing [1] - 4:24</p> <p>continuum [1] - 13:10</p> <p>contract [35] - 5:3, 5:5, 7:18, 7:19, 7:25, 9:8, 9:24, 10:8, 10:13, 13:21, 13:24, 14:2, 14:3, 14:4, 14:12, 14:14, 14:16, 14:21, 14:22, 14:24, 15:21, 16:15, 18:21, 19:17, 20:16, 21:6, 21:7, 22:6, 23:1, 26:11, 26:12, 27:8, 27:15, 28:12</p> <p>contracted [3] - 13:16, 21:3, 22:16</p> <p>contracting [1] - 20:24</p> <p>contractual [5] - 5:7, 19:6, 20:24, 23:15, 28:12</p> <p>contrary [2] - 10:18, 25:24</p> <p>control [2] - 13:15, 15:8</p> <p>controls [2] - 24:10, 28:8</p> <p>conventional [1] - 15:4</p> <p>convolutions [1] - 23:24</p> <p>copy [1] - 28:16</p> <p>correct [1] - 20:21</p> <p>correspondence [1] - 22:11</p> <p>counsel [7] - 2:18, 3:18, 6:9, 8:6, 9:7, 14:13, 29:1</p> <p>couple [1] - 24:3</p> <p>COURT [10] - 1:1, 2:23, 3:2, 3:6, 3:11, 3:15, 12:25, 23:20, 28:22, 29:9</p> <p>Court [17] - 2:5, 9:8, 10:12, 11:9, 11:18, 11:19, 12:8, 12:20, 13:5, 19:25, 24:5, 27:25, 28:1, 28:7, 28:15, 28:16</p> <p>court [1] - 14:6</p> <p>Courthouse [1] - 1:5</p> <p>create [2] - 9:16, 10:4</p> <p>CRR [1] - 2:5</p> <p>culpable [1] - 16:2</p> <p>cumulative [1] - 18:9</p>	<p>deals [2] - 11:19, 24:24</p> <p>dealt [1] - 8:18</p> <p>decide [1] - 11:9</p> <p>deciding [1] - 23:25</p> <p>decisional [1] - 15:15</p> <p>deemed [1] - 24:7</p> <p>default [1] - 10:15</p> <p>defaulted [1] - 10:15</p> <p>Defendant [2] - 1:19, 2:1</p> <p>defendant [10] - 3:17, 3:18, 3:19, 3:21, 4:2, 11:3, 11:13, 15:21, 25:19</p> <p>defendant's [1] - 5:5</p> <p>Defendant's [1] - 5:12</p> <p>defendants [41] - 4:10, 5:9, 5:16, 5:18, 8:10, 8:11, 9:1, 9:2, 13:12, 13:14, 13:20, 13:23, 14:4, 14:17, 14:25, 15:6, 15:9, 15:13, 15:20, 16:2, 16:17, 16:20, 17:4, 17:5, 17:9, 18:2, 18:15, 18:18, 18:25, 19:10, 19:14, 19:16, 21:14, 22:8, 22:15, 23:8, 27:22, 28:23, 29:5</p> <p>Defendants [1] - 1:8</p> <p>defendants' [3] - 5:6, 14:14, 27:17</p> <p>denied [3] - 27:18, 28:15, 29:4</p> <p>Denmark [1] - 20:2</p> <p>Department [3] - 6:11, 9:19, 15:12</p> <p>deprivation [1] - 9:25</p> <p>describe [1] - 14:6</p> <p>described [1] - 23:23</p> <p>describing [1] - 13:7</p> <p>despite [2] - 10:23, 18:13</p> <p>destruction [1] - 5:7</p> <p>detail [1] - 18:7</p> <p>detain [1] - 29:1</p> <p>detriment [3] - 6:18, 18:2, 22:23</p> <p>different [4] - 5:17, 10:5, 11:25, 25:1</p> <p>disagreed [1] - 4:17</p> <p>discovered [1] - 18:12</p> <p>dismiss [3] - 27:17, 27:23, 28:20</p> <p>dismissed [1] - 7:8</p> <p>disposed [1] - 24:2</p> <p>DISTRICT [2] - 1:1, 1:1</p> <p>District [1] - 1:12</p> <p>document [1] - 20:12</p> <p>documents [2] - 13:8, 18:8</p> <p>DOH [1] - 7:13</p> <p>dollars [1] - 5:19</p> <p>done [8] - 11:16, 11:19, 16:25, 19:9, 20:9, 22:1, 24:25, 27:11</p> <p>down [2] - 6:12, 20:15</p> <p>dramatically [2] - 5:16, 10:5</p> <p>driving [1] - 21:20</p> <p>due [3] - 15:24, 16:15, 22:1</p> <p>duty [14] - 8:11, 9:4, 9:5, 9:11, 9:16, 10:4, 10:22, 13:24, 13:25, 14:9, 18:20, 22:3, 23:9, 28:5</p>	<p>earns [1] - 25:6</p> <p>East [1] - 2:5</p> <p>EASTERN [1] - 1:1</p> <p>ECF [1] - 29:5</p> <p>effect [2] - 18:6, 18:9</p> <p>effective [2] - 13:15, 24:20</p> <p>effectively [1] - 17:18</p> <p>effectuated [1] - 16:6</p> <p>either [4] - 11:13, 17:4, 26:13, 27:6</p> <p>element [2] - 5:11, 14:19</p> <p>elements [4] - 5:3, 14:7, 14:11, 18:10</p> <p>Emma [1] - 3:9</p> <p>enable [2] - 17:3, 22:10</p> <p>enabled [3] - 15:20, 16:19, 19:21</p> <p>enablers [1] - 19:18</p> <p>enabling [1] - 23:14</p> <p>end [2] - 22:14</p> <p>enforceable [1] - 19:9</p> <p>enriched [1] - 26:8</p> <p>enrichment [8] - 10:25, 18:14, 19:24, 22:25, 26:4, 26:5, 27:2, 27:21</p> <p>ensure [1] - 28:10</p> <p>enter [2] - 5:23, 20:17</p> <p>entered [5] - 8:21, 14:17, 15:1, 16:3, 17:14</p> <p>entitled [5] - 4:2, 7:4, 7:9, 7:24, 22:5</p> <p>entitlement [1] - 4:7</p> <p>entity [4] - 7:14, 16:7, 16:12, 20:25</p> <p>ENV [1] - 1:4</p> <p>equity [2] - 11:15, 20:1</p> <p>ERIC [1] - 1:11</p> <p>err [1] - 13:4</p> <p>escrow [4] - 9:3, 21:9, 21:11, 22:20</p> <p>escrowed [1] - 15:24</p> <p>escrowing [1] - 18:19</p> <p>ESQ [2] - 1:20, 1:21</p> <p>essence [1] - 14:24</p> <p>essential [1] - 24:10</p> <p>essentially [2] - 10:6, 25:6</p> <p>established [1] - 14:12</p> <p>establishing [1] - 14:11</p> <p>ET [1] - 1:7</p> <p>event [2] - 4:20, 25:13</p> <p>events [3] - 6:6, 7:2, 13:6</p> <p>evidence [1] - 25:10</p> <p>exact [1] - 10:21</p> <p>exactly [1] - 12:5</p> <p>except [2] - 8:19, 14:22</p> <p>excess [1] - 21:16</p> <p>exchange [2] - 15:8, 15:17</p> <p>exclusive [2] - 17:18, 21:23</p> <p>excuse [3] - 9:1, 9:4, 10:11</p> <p>execute [1] - 27:5</p> <p>executed [2] - 4:14, 20:12</p> <p>execution [1] - 20:13</p> <p>exhibit [1] - 15:24</p> <p>exist [3] - 22:4, 22:5, 22:6</p> <p>existed [1] - 23:13</p> <p>existence [1] - 14:9</p>
D		
<p>damage [1] - 6:1</p> <p>damages [4] - 4:12, 5:11, 9:23, 9:25</p> <p>Daniel [1] - 3:1</p> <p>dark [1] - 23:5</p> <p>David [1] - 3:7</p> <p>DAVID [1] - 2:2</p> <p>days [1] - 29:7</p> <p>deal [32] - 5:22, 6:12, 6:15, 6:17, 6:18, 6:23, 10:11, 10:15, 10:20, 15:3, 16:9, 17:7, 17:10, 18:1, 18:4, 19:9, 19:11, 20:9, 20:10, 20:11, 20:17, 20:18, 22:16, 23:3, 24:25, 25:5, 25:14, 26:6, 27:5, 27:10, 27:11</p> <p>dealing [1] - 22:6</p>	<p>deals [2] - 11:19, 24:24</p> <p>dealt [1] - 8:18</p> <p>decide [1] - 11:9</p> <p>deciding [1] - 23:25</p> <p>decisional [1] - 15:15</p> <p>deemed [1] - 24:7</p> <p>default [1] - 10:15</p> <p>defaulted [1] - 10:15</p> <p>Defendant [2] - 1:19, 2:1</p> <p>defendant [10] - 3:17, 3:18, 3:19, 3:21, 4:2, 11:3, 11:13, 15:21, 25:19</p> <p>defendant's [1] - 5:5</p> <p>Defendant's [1] - 5:12</p> <p>defendants [41] - 4:10, 5:9, 5:16, 5:18, 8:10, 8:11, 9:1, 9:2, 13:12, 13:14, 13:20, 13:23, 14:4, 14:17, 14:25, 15:6, 15:9, 15:13, 15:20, 16:2, 16:17, 16:20, 17:4, 17:5, 17:9, 18:2, 18:15, 18:18, 18:25, 19:10, 19:14, 19:16, 21:14, 22:8, 22:15, 23:8, 27:22, 28:23, 29:5</p> <p>Defendants [1] - 1:8</p> <p>defendants' [3] - 5:6, 14:14, 27:17</p> <p>denied [3] - 27:18, 28:15, 29:4</p> <p>Denmark [1] - 20:2</p> <p>Department [3] - 6:11, 9:19, 15:12</p> <p>deprivation [1] - 9:25</p> <p>describe [1] - 14:6</p> <p>described [1] - 23:23</p> <p>describing [1] - 13:7</p> <p>despite [2] - 10:23, 18:13</p> <p>destruction [1] - 5:7</p> <p>detail [1] - 18:7</p> <p>detain [1] - 29:1</p> <p>detriment [3] - 6:18, 18:2, 22:23</p> <p>different [4] - 5:17, 10:5, 11:25, 25:1</p> <p>disagreed [1] - 4:17</p> <p>discovered [1] - 18:12</p> <p>dismiss [3] - 27:17, 27:23, 28:20</p> <p>dismissed [1] - 7:8</p> <p>disposed [1] - 24:2</p> <p>DISTRICT [2] - 1:1, 1:1</p> <p>District [1] - 1:12</p> <p>document [1] - 20:12</p> <p>documents [2] - 13:8, 18:8</p> <p>DOH [1] - 7:13</p> <p>dollars [1] - 5:19</p> <p>done [8] - 11:16, 11:19, 16:25, 19:9, 20:9, 22:1, 24:25, 27:11</p> <p>down [2] - 6:12, 20:15</p> <p>dramatically [2] - 5:16, 10:5</p> <p>driving [1] - 21:20</p> <p>due [3] - 15:24, 16:15, 22:1</p> <p>duty [14] - 8:11, 9:4, 9:5, 9:11, 9:16, 10:4, 10:22, 13:24, 13:25, 14:9, 18:20, 22:3, 23:9, 28:5</p>	<p>earn [1] - 15:14</p>
E		

<p>existing [2] - 12:11, 12:18 expect [2] - 3:20, 18:22 expectation [1] - 26:13 expense [4] - 11:4, 11:6, 11:9, 11:11 expressed [1] - 21:23 expressly [3] - 14:16, 17:16, 20:14 extend [1] - 21:13 extending [1] - 28:9 extension [1] - 12:11 extent [5] - 27:24, 28:1, 28:6, 28:16, 29:9</p>	<p>full [2] - 16:15, 21:6 functional [2] - 4:17, 5:25 fundamental [1] - 11:15 funds [3] - 19:20, 20:10, 22:2</p> <p style="text-align: center;">G</p> <p>gain [1] - 6:16 game [1] - 16:5 gap [1] - 23:1 generates [1] - 24:22 given [1] - 28:3 granted [3] - 12:22, 27:23, 28:2 ground [1] - 4:3 grounded [1] - 12:17 grounds [1] - 4:7 GROUP [1] - 1:3 Group [3] - 1:15, 2:14, 2:21 guess [1] - 23:22 guys [1] - 20:2</p> <p style="text-align: center;">H</p> <p>Hamlet [1] - 20:1 hands [2] - 22:11, 24:12 harass [1] - 12:13 head [1] - 19:25 Health [2] - 6:11, 15:12 hear [3] - 3:20, 5:4, 25:22 heard [1] - 13:1 hearing [2] - 7:1, 9:6 heavily [1] - 23:4 help [1] - 15:21 Henderson [4] - 2:1, 2:14, 3:8, 13:21 HENDERSON [1] - 1:6 herring [1] - 13:25 Hill [4] - 2:1, 2:14, 3:8, 13:21 HILL [1] - 1:6 Hinman [1] - 3:7 HINMAN [1] - 2:1 hired [3] - 10:7, 10:12, 10:17 HOME [1] - 1:6 Home [1] - 2:14 Honor [13] - 2:22, 3:23, 8:15, 9:6, 13:2, 20:2, 21:18, 23:17, 23:19, 28:21, 29:4, 29:14, 29:15 HONORABLE [1] - 1:11 hundreds [1] - 5:19 hurt [1] - 6:13</p>	<p>improperly [1] - 14:21 INC [2] - 1:3, 1:7 Inc [1] - 2:14 Inc. [1] - 2:21 included [3] - 13:7, 15:23, 21:25 including [1] - 9:25 incorporated [1] - 24:5 increase [1] - 21:12 increased [1] - 17:19 increasing [1] - 21:22 indication [1] - 5:8 individual [1] - 7:17 induce [1] - 5:6 inducing [1] - 14:23 inequitable [1] - 20:5 information [1] - 12:16 ingredient [1] - 15:11 initial [3] - 6:25, 7:12, 24:21 injunctive [1] - 23:5 injure [1] - 12:13 intent [5] - 5:6, 5:8, 5:18, 5:23, 8:5 intentionally [1] - 14:20 interest [7] - 4:12, 7:16, 7:19, 16:6, 19:1, 24:18, 24:20 interestingly [1] - 18:12 interfere [2] - 23:10, 25:19 interference [12] - 4:20, 5:3, 7:20, 8:3, 14:2, 17:22, 18:11, 18:14, 25:4, 25:8, 27:3, 27:21 interferes [3] - 14:21, 19:5, 25:12 interfering [1] - 18:21 irrelevant [1] - 20:23 Island [5] - 1:19, 2:25, 13:13, 16:13, 20:23 issue [2] - 18:20, 23:25 issued [1] - 7:7 issues [1] - 24:1 iterations [1] - 9:12 itself [4] - 4:10, 7:3, 17:10, 24:7</p>
F		J
<p>facial [1] - 21:19 facilitate [1] - 6:22 facility [1] - 7:15 fact [18] - 4:11, 4:20, 5:14, 6:24, 8:5, 8:7, 9:6, 9:11, 10:13, 10:20, 10:21, 12:1, 12:17, 13:16, 20:15, 23:7, 27:18, 27:19 facts [2] - 13:18, 28:3 factual [2] - 12:14, 24:6 failed [1] - 26:12 fair [1] - 4:3 faith [1] - 22:6 fall [2] - 25:17 false [1] - 12:14 far [1] - 19:24 fashion [1] - 15:4 February [2] - 14:18, 15:1 federal [1] - 12:15 fee [10] - 10:14, 15:24, 16:19, 18:24, 24:17, 25:1, 25:7, 25:13, 25:20, 27:15 fees [2] - 8:23, 14:1 felt [1] - 5:22 filed [2] - 13:14, 18:13 financing [1] - 23:2 finder [1] - 8:19 finished [1] - 22:16 first [5] - 9:13, 12:4, 13:11, 16:4, 22:3 First [1] - 9:18 five [1] - 5:11 follow [1] - 28:25 following [1] - 9:21 follows [1] - 24:2 forest [1] - 23:23 form [1] - 27:7 formal [4] - 13:17, 15:25, 18:15, 21:8 formally [1] - 18:1 forth [3] - 8:13, 8:17, 11:1 frames [1] - 11:25 frankly [1] - 12:1 freezing [1] - 20:4 fresh [1] - 20:10 from/of [1] - 21:24 front [1] - 20:9 froze [1] - 19:12 fulfillment [1] - 25:9</p>	I	<p>January [1] - 17:21 Joseph [2] - 3:9 judge [3] - 12:8, 29:1, 29:11 Judge [2] - 1:12, 28:24 junction [1] - 15:22 June [8] - 6:5, 9:7, 9:10, 15:5, 16:3, 18:16, 21:18, 29:5 justice [1] - 11:15</p>
	K	
	<p>identified [2] - 15:2, 18:9 important [2] - 14:11, 25:3 importantly [1] - 5:24 impose [1] - 28:9 impressed [1] - 28:5</p>	<p>keep [5] - 6:11, 6:15, 6:17, 6:22, 6:23 keeping [1] - 8:7 kicked [1] - 17:12 kind [5] - 10:4, 17:1, 23:7, 24:22, 28:4 knowing [1] - 22:23</p>

knowledge [3] - 5:5, 14:14, 19:2 known [1] - 22:6	MENDEL [2] - 1:19, 1:20 Mendel [1] - 2:24 mention [1] - 14:8 mentioned [5] - 13:6, 14:10, 18:9, 22:19, 24:3 merit [2] - 12:9, 14:22 might [1] - 18:22 mine [1] - 9:20 minute [1] - 24:25 missing [1] - 15:11 modification [1] - 12:11 modified [4] - 21:7, 21:10, 21:12 modifies [1] - 20:14 moment [1] - 6:7 money [6] - 5:15, 11:14, 15:24, 17:24, 22:1, 22:10 month [3] - 17:13, 17:15 monthly [1] - 17:12 months [1] - 18:16 Moskowitz [1] - 3:13 MOSKOWITZ [1] - 1:21 most [1] - 14:10 motion [13] - 3:16, 3:24, 4:6, 7:1, 12:22, 24:1, 24:6, 27:17, 27:22, 27:24, 28:14, 28:20, 29:4 move [3] - 5:10, 7:2, 8:8 moving [2] - 21:15, 23:4 MR [12] - 2:19, 2:24, 3:4, 3:7, 3:13, 3:23, 13:2, 23:19, 28:21, 29:3, 29:13, 29:15 must [2] - 11:3, 11:12	O obligated [1] - 8:22 obligation [6] - 9:9, 11:21, 23:10, 25:20, 27:1, 28:10 obligations [1] - 23:15 obtain [1] - 25:13 obviously [2] - 4:16, 5:15 occur [1] - 27:13 occurred [2] - 4:20, 7:12 occurs [2] - 7:20 OF [1] - 1:1 offense [1] - 19:3 office [2] - 3:5, 3:13 old [2] - 8:7, 20:11 One [1] - 14:20 one [13] - 3:11, 9:16, 10:21, 14:11, 15:11, 18:8, 18:22, 21:7, 24:9, 24:17, 24:22, 26:25, 29:3 operate [4] - 11:2, 16:23, 17:2, 18:1 operating [1] - 17:6 opportunity [2] - 5:14, 28:18 opposite [2] - 10:21, 28:11 opposition [6] - 7:1, 8:9, 8:25, 11:17, 13:1, 21:15 oral [1] - 2:16 orchestrate [1] - 19:19 orchestrated [1] - 20:3 order [4] - 4:2, 6:22, 17:24, 23:18 organized [1] - 23:11 original [2] - 16:9, 16:10 otherwise [1] - 14:23 ought [1] - 28:4 owed [2] - 23:9, 27:16 owing [2] - 15:25, 16:16 own [5] - 5:9, 5:24, 6:16, 6:24, 22:15 owned [1] - 20:23 owner [1] - 10:1 ownership [9] - 7:25, 16:6, 16:12, 16:14, 16:15, 24:18, 24:20, 27:8, 27:13
L laid [1] - 18:7 language [1] - 27:12 last [2] - 11:20, 24:25 Law [2] - 4:16, 11:3 law [13] - 8:7, 11:1, 11:12, 12:1, 12:9, 12:11, 12:18, 12:19, 15:15, 19:25, 28:7, 28:9 lawful [2] - 9:1, 9:4 lawsuit [1] - 22:17 lawyers [2] - 3:21 lease [1] - 7:15 least [2] - 9:3, 18:23 leaves [1] - 7:21 left [1] - 27:11 legal [2] - 9:4, 9:9 legally [2] - 20:21, 22:15 liable [1] - 9:23 limitation [1] - 27:6 limitations [8] - 4:21, 4:23, 5:1, 5:2, 8:4, 17:22, 24:1, 25:18 line [1] - 18:11 listening [1] - 17:18 listing [11] - 21:23, 24:9, 24:12, 24:15, 25:2, 25:9, 25:13, 25:15, 25:24, 27:6, 27:12 litigation [1] - 12:13 LIVING [1] - 1:7 Living [1] - 2:15 LLC [1] - 7:16 look [3] - 10:12, 12:9, 24:14 looked [1] - 25:9 loss [1] - 11:13 Luntz [1] - 3:7 LUNTZ [2] - 2:2, 3:7	N N.Y [1] - 1:6 necessary [1] - 19:15 need [3] - 23:20, 29:9, 29:11 needed [1] - 17:25 needs [1] - 28:16 negotiation [1] - 27:14 never [3] - 13:25, 26:7, 26:20 new [4] - 7:24, 9:4, 16:4, 20:17 NEW [1] - 1:1 New [15] - 1:16, 1:20, 2:2, 2:6, 2:20, 2:25, 3:8, 4:16, 11:3, 12:7, 14:6, 14:19, 15:12, 15:15, 28:7 next [1] - 14:19 none [2] - 25:18, 28:22 normal [1] - 23:1 normally [1] - 9:20 note [2] - 2:17, 3:15 notes [4] - 21:9, 21:12, 21:13 nothing [5] - 10:18, 16:8, 22:10, 24:11 notice [3] - 4:3, 28:13, 29:5 noting [1] - 13:3 number [3] - 2:15, 5:11, 7:11	P P.C [1] - 1:19 p.m [1] - 1:9 page [1] - 9:10 paid [20] - 5:23, 8:11, 10:1, 11:5, 11:11, 11:20, 14:1, 15:3, 15:25, 17:9, 18:3, 18:17, 21:4, 21:6, 21:24, 22:9, 22:17, 23:9, 23:10, 23:14 papers [11] - 3:16, 3:22, 4:16, 4:22, 6:25, 7:6, 8:9, 8:25, 10:23, 11:17, 21:15 paragraph [1] - 18:8 Paragraph [1] - 16:11 paragraphs [2] - 13:7, 24:6 parameters [1] - 28:3 part [9] - 5:8, 5:21, 6:11, 10:22, 14:5, 18:23, 19:17, 19:18, 22:2
M Magistrate [1] - 28:24 magistrate [1] - 29:11 majority [2] - 16:11, 16:15 maliciously [1] - 12:13 management [1] - 4:13 manner [7] - 19:10, 19:11, 19:20, 19:21, 20:4, 22:24, 23:11 Manor [4] - 1:19, 3:1, 16:13, 20:23 market [1] - 13:12 marketed [1] - 23:4 material [1] - 12:14 matter [3] - 22:25, 28:19, 28:20 matters [1] - 19:5 mean [1] - 24:16 meant [1] - 4:17 mechanical [1] - 2:8		

<p>particular [1] - 4:9</p> <p>parties [11] - 8:13, 8:14, 8:18, 15:1, 15:5, 19:8, 20:13, 22:7, 22:12, 22:17, 23:2</p> <p>party [5] - 5:4, 20:24, 28:11, 28:13</p> <p>pattern [1] - 10:21</p> <p>Paul [1] - 3:4</p> <p>PAUL [1] - 1:21</p> <p>pay [15] - 8:22, 9:2, 9:9, 9:23, 10:10, 10:19, 10:23, 11:7, 11:8, 11:19, 11:21, 19:22, 22:23, 25:20, 26:12</p> <p>paying [5] - 13:16, 17:5, 19:20, 21:11, 26:11</p> <p>payment [3] - 21:8, 21:9, 21:11</p> <p>payments [3] - 5:19, 15:9, 17:12</p> <p>pecuniary [1] - 19:1</p> <p>perform [1] - 14:24</p> <p>performance [1] - 14:21</p> <p>perhaps [1] - 26:11</p> <p>perpetuity [1] - 8:1</p> <p>person [3] - 14:23, 16:5</p> <p>personal [2] - 5:10, 6:16</p> <p>Philip [1] - 3:9</p> <p>place [7] - 12:4, 13:8, 15:16, 16:1, 20:18, 23:6</p> <p>plain [1] - 4:1</p> <p>plaintiff [19] - 2:20, 4:6, 5:4, 6:1, 8:9, 8:20, 9:7, 9:12, 11:6, 11:12, 11:14, 11:17, 11:23, 15:25, 19:12, 20:4, 23:13, 28:24</p> <p>Plaintiff [8] - 1:4, 1:15, 5:12, 5:13, 5:16, 7:18, 8:25, 13:11</p> <p>plaintiffs [1] - 16:24</p> <p>Plaintiffs [3] - 4:1, 7:6, 9:13</p> <p>plaintiffs' [4] - 6:9, 8:6, 11:4, 11:10</p> <p>Plaintiffs' [4] - 2:18, 4:14, 5:24, 6:24</p> <p>plausible [2] - 27:2, 27:3</p> <p>plausibly [1] - 27:20</p> <p>play [1] - 27:15</p> <p>player [1] - 16:5</p> <p>Plaza [1] - 2:5</p> <p>plea [1] - 22:25</p> <p>plead [1] - 18:5</p> <p>pleader [1] - 4:2</p> <p>pleadings [1] - 12:17</p> <p>pled [1] - 13:10</p> <p>Pohorelsky [1] - 28:25</p> <p>point [7] - 7:3, 7:15, 8:3, 12:20, 15:20, 17:1, 21:7</p> <p>pointed [1] - 11:20</p> <p>points [1] - 8:2</p> <p>policeman's [1] - 28:10</p> <p>position [4] - 4:14, 5:15, 6:2, 27:10</p> <p>possession [4] - 13:15, 15:7, 15:17, 17:5</p> <p>possibilities [2] - 24:15, 24:16</p> <p>possibility [1] - 24:17</p> <p>potential [1] - 24:13</p> <p>potentially [1] - 25:7</p>	<p>precisely [1] - 18:5</p> <p>prejudice [5] - 7:8, 12:23, 16:23, 17:6, 27:23</p> <p>present [2] - 3:3, 11:17</p> <p>presented [1] - 12:20</p> <p>preserved [1] - 20:19</p> <p>preserves [1] - 20:15</p> <p>PRESTIGE [1] - 1:3</p> <p>prestige [1] - 19:8</p> <p>Prestige [20] - 1:15, 2:13, 2:21, 9:2, 14:3, 15:14, 16:19, 17:6, 18:3, 19:8, 19:22, 20:6, 21:24, 22:1, 22:2, 22:9, 22:13, 22:20, 23:15</p> <p>Prestige's [2] - 21:22, 22:23</p> <p>price [4] - 16:15, 17:19, 21:20, 21:25</p> <p>primarily [1] - 12:12</p> <p>principles [1] - 11:15</p> <p>problem [3] - 4:19, 10:4, 23:7</p> <p>procedural [1] - 29:3</p> <p>Proceedings [1] - 2:8</p> <p>proceeds [2] - 16:18, 21:24</p> <p>produced [2] - 2:9, 21:1</p> <p>product [1] - 26:18</p> <p>PROGRAM [1] - 1:7</p> <p>Program [1] - 2:15</p> <p>progressed [1] - 10:9</p> <p>prolong [1] - 12:12</p> <p>proof [1] - 8:10</p> <p>properly [4] - 9:9, 27:25, 28:1, 28:15</p> <p>property [6] - 5:20, 7:15, 8:1, 10:2, 11:14, 22:22</p> <p>proposed [1] - 9:22</p> <p>proposition [1] - 9:21</p> <p>prospective [1] - 6:21</p> <p>provide [5] - 4:7, 21:7, 26:1, 26:2, 28:17</p> <p>provided [2] - 25:2, 26:6</p> <p>provides [2] - 14:20, 24:15</p> <p>providing [2] - 17:15, 26:14</p> <p>provision [5] - 16:20, 17:12, 22:20, 24:23, 24:24</p> <p>pulls [1] - 25:1</p> <p>purchase [14] - 8:12, 8:15, 8:17, 9:3, 14:16, 15:2, 16:10, 17:11, 17:17, 17:19, 20:13, 21:25, 28:18</p> <p>purchaser [1] - 9:22</p> <p>purport [1] - 26:1</p> <p>purporting [1] - 26:2</p> <p>purpose [1] - 18:6</p> <p>pursuant [2] - 8:22, 24:21</p> <p>put [2] - 18:4, 22:10</p> <p>putting [2] - 23:24, 23:25</p>	<p>quoting [1] - 6:9</p>
		R
		<p>real [1] - 10:11</p> <p>really [2] - 20:8, 24:10</p> <p>reason [9] - 7:5, 9:24, 11:16, 12:3, 12:21, 19:16, 19:18, 26:13</p> <p>reasonable [3] - 12:10, 26:13, 26:25</p> <p>reasoned [1] - 10:12</p> <p>reasons [2] - 5:10, 28:17</p> <p>receive [1] - 26:21</p> <p>received [2] - 11:3, 26:7</p> <p>receives [1] - 26:16</p> <p>recorded [1] - 2:8</p> <p>red [1] - 13:25</p> <p>referred [3] - 13:9, 14:16, 17:17</p> <p>refers [2] - 17:17, 20:14</p> <p>refuted [1] - 21:14</p> <p>regardless [1] - 25:16</p> <p>relate [1] - 27:19</p> <p>relates [1] - 4:19</p> <p>relationship [8] - 5:7, 8:23, 26:9, 26:21, 26:22, 27:19, 28:8, 28:12</p> <p>release [2] - 21:8, 21:10</p> <p>released [1] - 22:2</p> <p>relied [1] - 14:8</p> <p>relief [3] - 4:2, 4:11, 23:5</p> <p>rely [1] - 9:16</p> <p>remaining [1] - 28:23</p> <p>remains [1] - 9:11</p> <p>Reporter [1] - 2:5</p> <p>reporter [1] - 28:17</p> <p>represent [3] - 8:13, 8:14, 8:18</p> <p>represented [1] - 24:8</p> <p>request [1] - 12:3</p> <p>requested [2] - 4:11, 26:7</p> <p>required [2] - 15:16, 21:6</p> <p>requires [1] - 3:25</p> <p>resolution [1] - 12:12</p> <p>respect [4] - 8:19, 24:1, 24:16, 26:3</p> <p>respective [1] - 13:19</p> <p>responsibility [2] - 10:9, 10:16</p> <p>responsible [1] - 10:19</p> <p>rest [1] - 20:15</p> <p>restatement [1] - 14:20</p> <p>rests [1] - 4:4</p> <p>result [3] - 5:12, 24:11, 27:14</p> <p>retained [3] - 11:13, 11:14, 13:11</p> <p>reversal [1] - 12:11</p> <p>revised [1] - 17:20</p> <p>RICHARD [1] - 1:15</p> <p>Richard [1] - 2:19</p> <p>rightly [1] - 22:1</p> <p>rights [1] - 19:6</p> <p>risk [1] - 5:21</p> <p>RMR [1] - 2:5</p> <p>RONALD [1] - 2:5</p>
	Q	
	<p>qualifies [1] - 25:14</p> <p>questioned [1] - 9:6</p> <p>questions [2] - 27:18, 27:19</p> <p>quote [5] - 8:6, 9:18, 9:19, 9:21, 10:3</p>	

<p>rotten ^[1] - 20:1 roughly ^[1] - 21:16 rule ^[1] - 28:16 Rule ^[2] - 12:15, 24:6 rules ^[2] - 12:7, 12:15 run ^[1] - 6:13</p>	<p>simply ^[3] - 12:20, 22:5, 23:9 Sirangelo ^[3] - 3:9, 3:10, 17:14 sitting ^[3] - 18:3, 19:25, 20:1 situation ^[1] - 20:6 six ^[4] - 6:1, 6:3, 11:2, 13:14 six-year ^[1] - 11:2 skeletal ^[1] - 13:18 slate ^[1] - 3:11 sold ^[2] - 7:16, 15:2 sole ^[1] - 19:16 solely ^[1] - 5:9 someone ^[1] - 19:6 soon ^[1] - 29:1 sorry ^[2] - 8:15, 11:10 sort ^[4] - 26:9, 27:15, 28:5, 28:10 sounds ^[2] - 10:3 speaking ^[2] - 6:6, 6:7 specifically ^[2] - 8:12, 8:17 Spinapp ^[1] - 4:22 standard ^[2] - 3:24, 13:22 stands ^[1] - 9:17 started ^[1] - 7:1 State ^[4] - 2:1, 3:8, 15:12, 15:15 state ^[2] - 8:5, 27:20 statement ^[1] - 4:1 statements ^[1] - 12:14 Staten ^[1] - 13:13 STATES ^[1] - 1:1 States ^[2] - 1:12, 19:3 statute ^[1] - 4:21, 4:23, 4:25, 5:2, 8:4, 11:2, 17:22, 24:1, 25:17, 25:18 statutory ^[1] - 28:7 stay ^[1] - 19:15 stems ^[1] - 12:7 stenography ^[1] - 2:8 stepping ^[1] - 6:12 Stern ^[7] - 3:1, 16:5, 16:7, 17:14, 20:16, 20:20, 21:6 still ^[3] - 13:17, 18:3, 19:11 stop ^[2] - 15:3, 15:19 STRAUB ^[1] - 2:1 Straub ^[1] - 3:7 Street ^[4] - 1:15, 2:1, 2:20, 3:8 style ^[1] - 13:10 subessential ^[1] - 6:14 substantial ^[1] - 12:19 substantially ^[1] - 21:21 substantive ^[1] - 21:20 substituted ^[1] - 16:14 substitution ^[1] - 20:25 successive ^[1] - 7:25 suddenly ^[1] - 7:1 sue ^[1] - 13:23 sued ^[4] - 14:1, 18:13, 18:21, 18:22 sufficient ^[1] - 15:13 suggests ^[1] - 25:23 supported ^[2] - 12:10, 15:23 supposed ^[1] - 17:9 sustained ^[1] - 5:11</p>	<p>switch ^[1] - 19:25</p>
S		
<p>SALAZAR ^[1] - 1:21 Salazar ^[1] - 3:4 sale ^[4] - 15:16, 18:16, 21:1, 21:24 sales ^[3] - 16:18, 18:18, 21:15 sanctions ^[8] - 7:9, 12:3, 12:5, 12:23, 27:24, 28:2, 28:14, 28:15 Sara ^[1] - 3:13 SARA ^[1] - 1:21 saw ^[1] - 7:12 Scharf ^[2] - 3:1, 16:7 scheduling ^[1] - 29:12 secure ^[1] - 17:4 see ^[5] - 11:4, 14:1, 18:24, 23:9, 28:2 seeing ^[2] - 23:23, 29:1 segregate ^[1] - 18:23 sell ^[1] - 13:12 seller ^[34] - 5:16, 8:14, 8:21, 8:22, 10:10, 10:17, 10:19, 11:7, 13:12, 14:4, 14:17, 15:9, 15:13, 15:20, 16:17, 16:20, 17:5, 17:24, 18:18, 19:16, 19:21, 24:13, 24:14, 25:6, 25:13, 26:3, 26:23, 26:24, 27:6, 27:9, 27:17, 28:11, 29:4 seller's ^[2] - 7:19, 25:25 sellers ^[11] - 3:17, 3:18, 5:13, 8:16, 11:19, 11:21, 20:17, 20:20, 22:12, 23:12, 25:20 sellers' ^[1] - 22:11 separate ^[1] - 8:21 series ^[1] - 16:3 service ^[7] - 26:2, 26:3, 26:5, 26:15, 26:17, 26:20, 26:21 services ^[1] - 24:21 Servideo ^[1] - 3:9 set ^[2] - 14:8, 21:14 sets ^[4] - 8:13, 8:17, 13:19, 19:10 several ^[1] - 16:4 shall ^[1] - 8:22 shifted ^[2] - 10:10, 10:14 short ^[1] - 4:1 show ^[3] - 11:12, 13:10, 18:10 showed ^[1] - 23:2 showing ^[1] - 4:1 shown ^[2] - 19:7, 23:4 shutting ^[1] - 6:12 side ^[3] - 9:20, 13:4, 17:13 sides ^[1] - 19:11 signed ^[1] - 10:13 significance ^[1] - 16:9 significant ^[1] - 5:21 simple ^[1] - 29:6</p>		<p style="text-align: center;">T</p> <p>tactically ^[2] - 6:8, 6:10 tax ^[1] - 15:15 terms ^[10] - 5:18, 16:9, 16:21, 21:13, 21:20, 21:23, 22:6, 24:13, 24:21, 25:14 THE ^[10] - 2:13, 2:23, 3:2, 3:6, 3:11, 3:15, 12:25, 23:20, 28:22, 29:9 themselves ^[3] - 3:20, 15:6, 18:25 therefore ^[4] - 9:8, 24:5, 26:16, 27:15 they've ^[1] - 9:3 thinking ^[1] - 24:22 third ^[3] - 5:4, 14:22, 14:23 Thirteenth ^[2] - 1:19, 2:25 thousands ^[1] - 5:19 three ^[6] - 4:21, 4:23, 11:1, 17:21, 18:16, 20:19 three-year ^[4] - 4:21, 4:23, 11:1, 17:21 ties ^[1] - 24:12 title ^[4] - 4:15, 5:20, 7:23, 18:15 today ^[1] - 21:23 together ^[2] - 18:4, 19:8 token ^[1] - 15:24 TOLKIN ^[1] - 2:5 took ^[4] - 13:8, 16:1, 23:6, 27:4 tort ^[2] - 4:24, 19:22 tortuous ^[12] - 4:20, 5:3, 7:20, 8:3, 14:1, 17:22, 18:11, 18:14, 19:13, 25:3, 27:3, 27:21 tortuously ^[1] - 25:19 total ^[1] - 21:4 transaction ^[3] - 6:22, 8:24, 28:4 transactions ^[1] - 16:3 transcript ^[2] - 2:8, 9:10 Transcript ^[1] - 2:9 transfer ^[6] - 15:17, 16:6, 24:18, 24:20, 27:12, 27:13 transfers ^[3] - 6:7, 7:11, 27:8 trees ^[1] - 23:23 trial ^[1] - 29:10 tried ^[1] - 9:12 troubling ^[1] - 6:4 true ^[1] - 20:21 try ^[1] - 25:5 trying ^[1] - 5:10 turn ^[1] - 17:17 turned ^[1] - 11:23 turning ^[1] - 22:13 twisted ^[1] - 11:23 twists ^[1] - 23:24 two ^[4] - 11:25, 17:10, 17:16, 24:15 type ^[1] - 9:13 typical ^[1] - 18:24</p>

U	world ^[1] - 29:6
U.S ^[1] - 1:5 ultimately ^[5] - 13:12, 17:3, 21:3, 27:11, 27:18 under ^[7] - 11:3, 12:15, 15:14, 23:12, 25:3, 25:12, 25:14 understood ^[2] - 10:18, 29:13 undertake ^[1] - 9:22 undertaken ^[1] - 12:12 undertook ^[1] - 5:19 unfettered ^[1] - 16:17 unfortunately ^[1] - 9:17 UNITED ^[1] - 1:1 United ^[1] - 19:3 united ^[1] - 1:12 unjust ^[9] - 10:25, 18:14, 19:24, 20:5, 22:25, 26:4, 27:2, 27:21 unjustly ^[1] - 11:13 unlawful ^[1] - 26:4 unremarkable ^[1] - 16:8 unrestricted ^[1] - 27:10 up ^[9] - 8:10, 9:4, 9:12, 11:25, 17:12, 18:11, 20:9, 21:20, 23:2 utter ^[1] - 7:21	Y year ^[6] - 4:21, 4:23, 10:9, 11:1, 11:2, 17:21 years ^[6] - 6:1, 6:3, 6:23, 13:15, 20:19, 23:3 YORK ^[1] - 1:1 York ^[15] - 1:16, 1:20, 2:2, 2:6, 2:20, 2:25, 3:8, 4:16, 11:3, 12:7, 14:6, 14:19, 15:12, 15:15, 28:7
V	Z
valid ^[1] - 5:3 various ^[1] - 9:12 versus ^[1] - 2:14 via ^[1] - 20:25 viable ^[1] - 19:10 view ^[2] - 21:25, 29:6 views ^[1] - 5:17 Vincent ^[1] - 3:9 virtual ^[1] - 23:12 vis ^[4] - 15:13, 26:5 vis-a-vis ^[2] - 15:13, 26:5 VITALIANO ^[1] - 1:11 voice ^[1] - 3:12	Zilberberg ^[4] - 2:24, 12:25, 13:5, 23:21 ZILBERBERG ^[8] - 1:19, 1:20, 2:24, 3:4, 3:13, 3:23, 23:19, 29:15
W	
waiting ^[1] - 18:3 warranted ^[1] - 12:17 watching ^[1] - 17:7 well-grounded ^[1] - 12:17 whatsoever ^[1] - 25:10 whole ^[1] - 6:14 Willy ^[1] - 3:1 win ^[1] - 7:8 wish ^[2] - 3:22, 13:1 wished ^[1] - 16:21 wishes ^[1] - 22:3 wonder ^[1] - 7:18 wonderful ^[1] - 10:3	